

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

IP-Enabled Services

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WC Docket No. 04-36

**REPLY COMMENTS OF THE OFFICE OF THE PEOPLE'S COUNSEL
FOR THE DISTRICT OF COLUMBIA**

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I. INTRODUCTION

The Office of the People’s Counsel for the District of Columbia (“OPC-DC” or “Office”), in furtherance of its mandate as the statutory representative of District of Columbia ratepayers in utility proceedings,¹ hereby respectfully submits its Reply Comments pursuant to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“*Notice*”) issued March 10, 2004.²

A. Summary of OPC’s Position

OPC-DC has reviewed the comments filed in this proceeding and concludes that no communication service provider has conclusively demonstrated the FCC should preempt states from implementing consumer protection measures or regulating intrastate Voice over Internet Protocol (“VoIP”) services. Accordingly, the Office recommends the PSC should reject those recommendations proposing federal preemption. OPC-DC reiterates recommendations submitted in its initial comments:

- The FCC should classify VoIP services that are similar in functionality to and serve as substitutes for telephone service as “telecommunications services” and, accordingly, regulate under Title II of the Telecommunications Act of 1996;

¹ D.C. CODE 2001 Ed. § 34-804(d).

² *In re IP-Enabled Services*, Notice of Proposed Rulemaking (“*Notice*”) WC Docket No. 04-36 (Mar. 10, 2004) (*VoIP Proceeding*).

- State commissions should continue to have a role in protecting consumer interests within their borders;
- VoIP service providers should be subject to federal and state commission regulations that govern service quality, customer proprietary network information, local number portability, E911 and disability access; and
- VoIP service providers should contribute to federal and state universal service funds.

OPC-DC's recommendations will help ensure that consumers receive the maximum benefit from VoIP services. OPC-DC urges the Commission to adopt these recommendations at the outset and to not unduly delay implementing regulations until the market develops or until such time when VoIP becomes a dominant service.

II. SUMMARY OF INITIAL COMMENTS

Commentors in this proceeding generally agree that VoIP service is a new communications tool that will revolutionize the manner in which Americans communicate, spur industry investment and improve network reliability and efficiency. The divergence, however, focuses on how to most effectively provide the service. Many local and competitive carriers assert that these benefits can only arise in a *deregulatory* environment and without conflicting state regulation. Consumer advocates on the other hand see the need for state and local regulatory input. Although there are divergent views on the appropriate regulatory framework and service classification for VoIP services, it is clear there is a general consensus that the FCC should establish consumer protection measures concerning E911 and disability access, consumer privacy, and service quality standards and, that states should play a role in enforcing that regulatory scheme. In addition, there is support from both industry and consumer advocates for VoIP services to contribute to the universal service fund.

A small minority of commentators argue the FCC should not implement regulations governing E911 and disability access or implement consumer protection measures. For example, 8x8, Inc.,³ Cablevision Systems Corporation⁴ and the Computer and Communications Industry Association⁵ argue that either such regulation would be burdensome on the industry and should be left to market forces or regulation should be left to the legislators once the market further develops. OPC-DC disagrees.

Whatever regulations are adopted, OPC-DC reiterates that the convergence of technology and pace of technological development necessitates a paradigm shift in the regulatory framework governing communication services in order to adequately protect the public interest.⁶

III. DISCUSSION

A. The FCC Should Classify VoIP Services as Telecommunications Services and Regulate Under Title II of the Telecommunications Act of 1996.

Pending the development of a regulatory framework that appropriately recognizes the characteristics of converging communications services and advances the public interest, OPC-DC submits VoIP services should be classified as telecommunications services and regulated under Title II of the Telecommunications Act of 1996 (“Act”). MCI’s white paper encourages regulators and legislators to adapt their thinking and to adopt a new public policy framework that appropriately reflects the manner in which technology, including the Internet, is fundamentally changing the way in which

³ 8x8, Inc. Comments, *VoIP Proceeding*, at 20-22, 29.

⁴ Cablevision System Corp, *VoIP Proceeding*, at 13 (The FCC should address intercarrier compensation and universal service support in a separate proceeding. Also, the industry should address disability access issues).

⁵ Computer and Communications Industry Assoc. Comments at 10, *VoIP Proceeding* (Congress will likely address social obligations like E911 access, CALEA and intercarrier compensation when VoIP becomes a dominant service).

Americans communicate in the business and social world.⁷ While OPC-DC takes no position on MCI's proposal that the FCC adopt the Network Layers Model, the Office agrees that regulators and legislators need to address converging technologies in this proceeding, and as appropriate in state proceedings where similar issues are presented.

As stated in the Office's Initial Comments, the Commission should regulate those VoIP services that are 1) functionally equivalent to and serve as substitutes for plain old telephone service; 2) are marketed to the public as a telephone service, 3) use the public switch telephone network ("PSTN") to originate and/or terminate calls, or 4) use telephone numbers administered by the North American Numbering Plan ("NANP").⁸ VoIP services that satisfy the above criterion should be classified as a telecommunications service. Other parties have filed criterion the FCC should consider in this proceeding.

The National Cable and Television Association ("NCTA"), Comcast Corporation ("Comcast") and Cox Communications, Inc, ("Cox")⁹ appear to endorse a four-prong test identifying VoIP services that will compete in the local telephone market and substitute for traditional telephone service. Their test is similar to that set forth in the *Stevens Report* and recommends that VoIP services should receive the same regulatory treatment as telecommunications services if they: 1) use the North American Numbering Plan ("NANP"); 2) use the public switch telephone network ("PSTN"); 3) are possible substitutes for plain old telephone service ("POTS"); and 4) use internet protocol to link the service provider with the end user, including IP adapters and/or an IP-based telephone

⁶ OPC-DC Initial Comments at 3.

⁷ RICHARD S. WHITT, A HORIZONTAL LEAP FORWARD: FORMULATING A NEW PUBLIC POLICY FRAMEWORK BASED ON THE NETWORK LAYERS MODEL, An MCI Public Policy Paper, Executive Summary at i (2004).

⁸ OPC Comments, *VoIP Proceeding*, at 4.

set.¹⁰ OPC-DC agrees with the cable carriers' recommendation that VoIP services satisfying the above criterion should receive the same regulatory treatment as telecommunications service providers.

Comcast currently provides cable television service in the District of Columbia. Both Comcast and Cox are certified as local telephone service providers in the District, but have yet to offer local telephone service in the District. The District of Columbia Office of Cable Television and Telecommunications regulates the cable companies, while Verizon DC and competitive local exchange carriers ("CLECs") are under the jurisdiction of the District of Columbia Public Service Commission ("DC PSC"). With the onslaught of intermodal competition, the FCC must adopt regulations that take into consideration the different regulatory authority of state regulatory agencies and give consumers clear guidance in determining what state agency has the authority to address VoIP complaints, billing disputes, and service quality issues. District of Columbia residential consumers are already confused on where to file complaints and billing disputes regarding Digital Subscriber Line ("DSL") and bundled local and long distance packages and should not be further frustrated by the introduction of VoIP services. It is not uncommon for OPC-DC to expend its resources and staff mediating residential consumer complaints on long distance and DSL issues. Consumers usually contact state and local government agencies based on their comfort level irrespective of who has the appropriate regulatory authority. Accordingly, OPC-DC submits state regulatory

⁹ Cox Comments, *VoIP Proceeding*, at 17-20.

¹⁰ See, NCTA Comments, *VoIP Proceeding*, at 7-9. Comcast Corp. Comments, *VoIP Proceeding*, at 3. See also, Comcast at n.14 (comments concerning intercarrier compensation..."pending such a reform, it is only fair to apply to VoIP service providers whatever rules apply to telecommunications carriers.") Cox Comments, *VoIP Proceeding*, at 17-20.

agencies and consumer advocates must be granted explicit authority to address and resolve consumer VoIP inquiries and complaints in an expeditious manner.

B. The FCC Must Adopt a Public Policy and Regulations That Allow States to Play a Role in Protecting their Respective Consumers.

OPC-DC submits the FCC should not adopt any recommendation proposing federal preemption of VoIP or IP-enabled services. Several VoIP service providers, state regulators, and consumer advocates support states having a role in protecting consumer interests in a partnership with the FCC. As AARP pointed out, residential consumers expect and rely upon state regulators to provide a forum for dispute mediation and resolution, and regulations that ensure they receive a high quality of service.¹¹

Proponents of federal preemption base their arguments on pure conjecture and speculation. No party has submitted any evidence or substantive legal argument why states should be prohibited from protecting the consumers within their respective border. Even Cox recognizes that the FCC cannot and will not be able to handle resolve consumer complaints in an expeditious manner as a result of numerous responsibilities and a limited number of staff available to handle complaints.¹² OPC-DC submits the FCC must establish concrete regulations that will guide the states on how to appropriately enforce federal regulations and implement consumer protection measures. Several states including California, Florida and New York, have been proactive in implementing their own regulations so as not to delay or impede the offering or development of innovative Internet-based voice and data services. Carriers should commend, not criticize, state

¹¹ American Association of Retired Persons Comments, *VoIP Proceeding*, at 2.

¹² Cox Comments, *VoIP Proceeding*, at 13-16.

commissions, for taking immediate responsible action in an area where the legislators and federal regulators have hesitated to do so.¹³

Covad Communications (“Covad”) recognizes the importance of states maintaining their traditional role overseeing local conditions in the telecommunications marketplace in their respective jurisdiction.¹⁴ Most importantly, Covad asserts that states should not be *robbed* of their traditional decision-making authority nor robbed of the opportunity to partner with the FCC in developing new IP-based services or applications.¹⁵ OPC-DC could not agree more. Precedent has been established in several state proceedings, for example quality of service and operation support systems (“OSS”), in which states have successfully implemented performance standards and measures. These measures have not adversely affected the ability of carriers to adhere to the national regulations adopted by the FCC.

Various state commissions have accommodated carrier requests to adopt uniform quality of service standards that mirror other jurisdictions within a carrier’s footprint. In response to comments filed by Verizon Washington DC, Inc. (“Verizon DC”), OPC-DC and CLECs, the DC PSC adopted performance standards that were developed as a result of a collaborative discussions first, in Virginia,¹⁶ and subsequently, standards that were further developed by the New York Public Service Commission and New York Carrier-to-Carrier Working Group.¹⁷ The DC PSC acknowledged that it was in the public

¹³ See, Cisco Systems, Inc. Comments, *VoIP Proceeding*, at ii, 3 (proposing the FCC eliminate...destructive and inconsistent state regulation).

¹⁴ Covad Communications Comments, *VoIP Proceeding*, at 18.

¹⁵ *Id* (emphasis added).

¹⁶ See, In re Development of Local Exchange Carrier Quality of Service Standards for the District, Formal Case No. 990, Order No. 11941, at 3, 6 (Mar. 5, 2001).

¹⁷ DC PSC Formal Case No. 990, Order No. 12230 (Nov. 9, 2001).

interest and less burdensome on carriers to adopt uniform quality of service performance standards, metrics and a change management plan that had been adopted in other Verizon jurisdictions. Finally, the DC PSC granted the request of Verizon DC and adopted the same performance assurance plan audit process that had been adopted by the New Jersey Public Service Commission.¹⁸ The DC PSC and OPC-DC have also successfully coordinated resolving long distance “slamming” complaints with the FCC Consumer Complaints and Inquiries Division. Clearly, as demonstrated it is very possible for the FCC and states to partner in developing complementary regulations and resolving consumer complaints on intrastate or interstate services. OPC-DC submits the FCC should not be persuaded to preempt the states in this important area based on speculative and legally baseless arguments presented by carriers who seek to avoid any type of local regulatory oversight.

Contrary to assertions made by NCTA, it would be premature to preempt state and local government regulation of VoIP services.¹⁹ NCTA has not shown that state regulations would impede the growth and development of Internet-based services.²⁰ In fact, state regulators and consumer advocates are better equipped to identify patterns of abusive business practices, as well as handle spamming and slamming complaints. Local phone companies may be responsible for transferring a telephone number to a VoIP service provider and consumers will expect the local government or consumer advocate agency to resolve the issue.²¹ In addition, consumers will most likely contact the local government consumer agency should they experience a power outage and lose their

¹⁸ DC PSC Formal Case No. 990, Order No. 12805 (Aug. 6, 2003).

¹⁹ NCTA Comments, *VoIP Proceeding*, at 8.

²⁰ *Id.* at 36-38.

Internet and VoIP connection that is usually dependent upon a standard telephone connected to a DSL or cable modem. As AT&T stated, the FCC should not attempt to extinguish legitimate state oversight as states have a genuine concern for residential and business concerns developing within their respective jurisdiction.²² Accordingly, OPC-DC submits that it would be premature for the FCC to prohibit the states from protecting their respective consumer interests.

C. The FCC Should Require VoIP Service Providers to Contribute to Universal Service and Provide E911 and Disability Access.

There is overwhelming support for VoIP service providers to contribute to the universal service fund under section 254 of the Telecommunications Act to level the playing field among voice and data service providers. OPC-DC supports CWA's assertion that the universal service support system may not be sustained if a [significant] amount of traffic migrates to the IP network from the PSTN or erodes the contribution base.²³ Cox stated that in exchange for eligible telecommunications carrier ("ETC") status, it would be willing to contribute to the USF for its VoIP services, on a per line or per number basis.²⁴ In addition, Verizon supports all VoIP service providers contributing to the USF in a competitively neutral manner as required under section 254 of the federal Act.²⁵ However, contrary to Cisco Systems and Qwest Communications International, Inc. ("Qwest") OPC-DC does not believe the market will develop sufficiently to monitor whether a VoIP service provider has complied with E911 access requirements. The

²¹ See, JAMES, A. MARTIN, AVOID VOIP GOTCHAS: VOICE OVER IP CAN SAVE YOU MONEY, IF YOU CAN AVOID THE TRAPS, PCWorld.com, available at <http://cssvc.pcworld.compuserve.com/computing/cis/articles>

²² Comments of AT&T Corp., *VoIP Proceeding*, at 7-8.

²³ Communication Workers of America Comments, *VoIP Proceeding*, at 17 ("CWA").

²⁴ Cox Communications, Inc. Comments, *VoIP Proceeding*, at 13 (May 28, 2004).

Internet marketplace has yet to sufficiently protect consumers from spamming or identity theft. Therefore, carriers should not be overzealous in their assertions that the market will protect VoIP subscribers from the same market abuses. OPC-DC supports Verizon's proposition that the FCC should established a phased-in approach for implementing E911 access. However, OPC-DC cautions that the FCC should not allow any undue delays in implementing E911 access for VoIP services as cell phone subscribers had experienced when the wireless industry delayed implementing local number portability.

IV. CONCLUSION

For the foregoing reasons, OPC-DC respectfully requests the Commission consider its Reply Comments and adopt the recommendations discussed herein:

- The FCC should classify VoIP services that are similar in functionality to and serve as substitutes for telephone service as “telecommunications services” and, accordingly, regulate under Title II of the Telecommunications Act of 1996;
- The Commission should not preempt state jurisdiction over intrastate VoIP calls;
- VoIP service providers should be subject to FCC and state commission rules that govern service quality and consumer protections; and

²⁵ Verizon Telephone Companies Comments, *VoIP Proceeding*, at 55-62.

- VoIP service providers should contribute to federal and state universal service funds.

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